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Via E-Mail

Appeals-southern-regional-office@fs.fed.us

USDA Forest Service
Attn: Appeal Reviewing Officer
1720 Peachtree Road, NW
Suite 811N
Atlanta, GA 30309-9102

Re: NOTICE OF APPEAL

Dear Appeal Reviewing Officer:

This is a notice of appeal filed pursuant to 36 CFR 219.14(b)(2) on behalf of appellants:

- *Georgia ForestWatch* (c/o Robin Hitner, 15 Tower Road, Ellijay, GA 30540, 706-635-8733)

Georgia ForestWatch is a not-for-profit forest conservation group dedicated to promoting naturally self-sustaining forests and watersheds primarily on the Chattahoochee-Oconee National Forests and to preserve their legacy for future generations. The organization's members often visit the Chattooga Wild and Scenic River ("River" and "Chattooga WSR") corridor, not only in Georgia, but also in the Sumter and Nantahala National Forests in adjoining North and South Carolina for recreation, nature study, and spiritual renewal. The organization's volunteers in Rabun County lead public hikes along portions of the River where the Forest Service proposes to permit boating, establish capacities for all users, construct parking facilities, and allow user-creation of trails, put-ins, and take-outs. Members help to maintain and re-route Forest Service hiking trails and to restore water quality in this region under Forest Service supervision.

- *Georgia Chapter of the Sierra Club* (c/o Colleen Kiernan or Larry Winslett, 743 East College Avenue, Suite B, Decatur, Georgia 30030, 404-607-1262, Fax: 404-876-5260)

Since 1892, the Sierra Club has been working to protect communities, wild places, and the planet itself. It is the largest and most influential grassroots environmental organization in the United States. Its mission is: To explore, enjoy, and protect the

wild places of the earth; To practice and promote the responsible use of the earth's ecosystems and resources; To educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. To that end, Sierra Club members regularly visit, volunteer in, and comment on the management of National Forests across the country, including the three that share the management of the Chattooga WSR.

➤ *Wilderness Watch*, (PO Box 9175, Missoula, Montana 59807, 406-542-2048)

Wilderness Watch is a national not-for-profit conservation organization based in Missoula, Montana, with a chapter in Georgia. It is America's leading conservation organization dedicated solely to protecting the lands and waters in the 110 million-acre National Wilderness Preservation System. The organization strives for preservation and proper stewardship of these remarkable Wilderness reserves through citizen oversight, education, and continual monitoring of federal management activities. Wilderness Watch has been actively involved in the discussion regarding proper management of the Upper Chattooga, including submitting comments. Its members regularly visit wilderness areas, including the Ellicott Rock Wilderness area, and wild areas, including the Upper Chattooga, to find the solitude and ecological integrity that cannot be found in other places.

Appellants have come together to appeal the joint decision to amend the Land and Resource Management Plans ("LRMPs") of the Nantahala and Pisgah, Chattahoochee-Oconee, and Sumter National Forests. The documents (hereinafter collectively referred to as "Decision Notices") within which these decisions are established are:

- 1) *Decision Notice and Finding of No Significant Impact: Amendment #22 to the Nantahala and Pisgah National Forests Land and Resource Management Plan, Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor* (signed by Acting Forest Supervisor Diane Rubiaco on January 31, 2012) (hereinafter "NCDN").
- 2) *Decision Notice and Finding of No Significant Impact: Amendment #1 to the 2004 Revised Land and Resource Management Plan Chattahoochee-Oconee National Forests, Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor* (signed by Forest Supervisor George Bain on January 31, 2012) (hereinafter "GADN").
- 3) *Decision Notice and Finding of No Significant Impact: Amendment #1 to the 2004 Revised Land and Resource Management Plan Sumter National Forest, Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor* (signed by Forest Supervisor Paul Bradley on January 31, 2012) (hereinafter "SCDN").

The Findings of No Significant Impact were supported by the *Environmental Assessment: Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor* (January 2012) ("2012 EA").

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1 Background

Fifty-seven miles of the Chattooga River corridor is designated a Wild and Scenic River (Chattooga WSR Corridor). Five miles of the designated corridor passes through the Ellicott Rock Wilderness. Management of the Chattooga WSR is shared among three national forests: the Nantahala in North Carolina, the Chattahoochee in Georgia, and the Sumter in South Carolina (collectively, “National Forests”). In 1977 the three national forests prepared the *Chattooga Wild and Scenic Management Plan*. It was revised in 1980 (“1980 Chattooga CRMP”). It has not been updated since 1980.

Within the region where the Chattooga WSR Corridor is located recreation use is projected to continue to expand, increasing by twenty percent over the next decade.¹ Twenty percent of the US population and 4 of the 5 fastest sprawling metropolises the earth has ever witnessed are within a 5-hour drive of the Chattooga WSR Corridor.² Already, according to their former Supervisor, the National Forests in North Carolina, “are the second most visited national forest(s) in the U.S.,” with 5 million visitors a year.³ In 1974, an estimated 21,000 floaters used the River each year, 4,000 with commercial outfitters.⁴ At present as many as 89,000 boaters a year run the lower sections of the Chattooga WSR Corridor.⁵ This is an increase of over 2,200 percent.

In order to protect the character of the Chattooga Wild and Scenic River, the original *Wild and Scenic River Study Report* (“WSR Report”) for the Chattooga WSR Corridor anticipated the threat that recreation might one day pose and directed that “[r]ecreation use will be regulated on the basis of carrying capacity of the land and water rather than on demand.”⁶ The drafters of the WSR Report recognized that the major management challenge for the Chattooga would be to maintain the river in the condition that made it worthy of inclusion in the National Wild and Scenic Rivers System while providing for “a safe and satisfying recreation experience.”⁷ That guidance rings as true today as it did in 1971, only what was speculation is now an urgent management issue.

Recreational uses that may seem or even be benign when carried out by one person one time have large impacts on the natural resources and experience of visitors to the National Forests when added together. Small incremental changes not visible on daily casual observation can lead to wholesale changes in the character of an area in the absence of careful and professional monitoring. Certainly the Chattooga and Ellicott Rock Wilderness are different places than they were in 1971. Difficult choices must be made by managers specialized in both resource protection and recreation management. Unfortunately what has happened on the Chattooga WSR Corridor is that the Forest Service has chosen to manage incrementally in response to the demands of various user groups, rather than holistically evaluating management of the Chattooga WSR Corridor and the Ellicott Rock Wilderness as it is required to do by law.

The Decision Notices have already caused actions detrimental to the National Forests (e.g., bulldozing a “road” that is not on the transportation atlas), and they

¹ 2012 EA 156.

² *Id.* at 381.

³ Citizens Times December 29, 2011.

⁴ 41 Fed. Reg. No. 56, 11847, 11849 (March 22, 1976).

⁵ Sumter LRMP, p. 2-24.

⁶ WSR Report, p. 86 (June 15, 1971).

⁷ *Id.*

will continue to do so, especially as plans to encourage “interim” access on non-system trails and user-creation of put-ins and take-outs are implemented.

2 Demand

Appellants demand the following:

- Abandon the plan to allow interim boating on the upper sections of the Chattooga WSR Corridor.
- Remove registration kiosks from locations other than those that are (a) on system trails, roads, or parking areas, and (b) listed in 36 C.F.R. § 261.77.
- Maintain the more than thirty-five years’ policy of protecting solitude and wildness on the Upper Chattooga WSR Corridor by maintaining the prohibition of all boating above the Highway 28 Bridge.
- Prepare a single, integrated, comprehensive river management plan (“CRMP”) for the Chattooga Wild and Scenic River in which natural resources and wilderness values are protected as first priority.
- Prepare an Environmental Impact Statement (“EIS”) covering management of the entire Chattooga WSR Corridor and any “interim” management plans.
- Set capacities as enforceable standards, not guidelines, that describe an actual level of visitor use that will not degrade the Chattooga Wild and Scenic River for the entire Chattooga WSR Corridor, not just for the lower sections.
- Set capacities for the Chattooga WSR Corridor to protect the solitude of the Ellicott Rock Wilderness, recognizing the River as a new potential access point.
- Do not rely on self-registration to determine whether capacity goals are achieved.
- Describe an effective and realistic monitoring plan to evaluate recreational impacts on natural resources, solitude, user conflict year round (not just in the summer), and in all weather conditions; Schedule monitoring at specific intervals instead of “periodically;” include within the North Carolina LRMP amendments the specific monitoring requirements prescribed by the Fish and Wildlife Service for *Gymnoderma lineare*.
- Include a two year sunset provisions for any new uses of the Chattooga WSR Corridor or the Ellicott Rock Wilderness so that impacts to resources can be evaluated before uses are established in the public mind as permanent.
- Employ adaptive management that triggers management changes before degradation of the Ellicott Rock Wilderness and the Chattooga WSR occur.
- Set realistic goals for monitoring based on resources available and then develop a workable adaptive management framework.
- Add no new roads or parking areas in or near the Ellicott Rock Wilderness or the Chattooga WSR Corridor, and obliterate temporary roads, especially those used for off road vehicle (“OHV”) access to wild areas; Bring road density into alignment with National Forests LRMPs and Roads Analysis Process.
- Encourage all users to access the Chattooga WSR Corridor on existing designated trails and designate put-ins, take-outs and portage trails for all

sections of the Chattooga WSR Corridor where boating and/or floating is permitted; Discourage use and creation of non-designated trails, put-ins and take-outs; Where trails must be added, follow Forest Service policy for trail development and maintenance.

- Only allow uses for which adequate infrastructure (e.g., designated trails, designated put-ins and take-outs, and a search and rescue plan) is in place.
- Plan for effective enforcement--do not develop unenforceable and complex management plans based on unrealistic budgetary expectations.
- Evaluate impacts of Alternative 13A on species listed in the July 12, 2011 stipulated settlement agreement between the Center for Biological Diversity and the Fish and Wildlife Service.⁸
- Develop a Search and Rescue Plan, especially in Wilderness designated area, until a pre-accident plan is developed; Do not allow new uses until a pre-accident plan is developed; Confer with local search and rescue teams to develop the plan.
- Involve the public in implementation decisions regarding access to the Chattooga WSR Corridor and the Ellicott Rock Wilderness; Do not use categorical exclusions for trail, put-in, take-out, and parking lot development; Cease construction of the non-system County Line Road/Trail.
- Address problems with clarity of definitions and direction in the Decision Notices and the amendments to the LRMPs.

3 Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act ("WSRA") requires that each designated river be managed to "protect and enhance the values which caused it to be" designated, placing "primary emphasis" on "protecting its esthetic, scenic, historic, archeologic, and scientific features."⁹ To accomplish this, managing agencies must prepare an integrated comprehensive river management plan and establish meaningful and enforceable capacity limits to protect each designated river's values.

3.1 *There is no up-to-date single, comprehensive river management plan for the Chattooga.*

There is no current comprehensive, integrated management plan for the Chattooga Wild and Scenic River. "The WSRA requires a single, comprehensive plan that collectively addresses all the elements of the plan--both the 'kinds' and 'amounts' of permitted use--in an integrated manner."¹⁰ Plans developed prior to 1986 were

⁸ *In re Endangered Species Act Section 4 Deadline Litigation*, Stipulated Settlement Agreement Case 1:10-mc-00377-EGS (District of D.C. 2011) ("CBD Settlement").

⁹ 16 USCS § 1281(a).

¹⁰ *Friends of Yosemite Valley v. Kempthorne* ("Yosemite III"), 520 F.3d 1024, 1036 (9th Cir. Cal. 2008); see also Attachment A, Declaration of Glen E. Haas (October 8, 2009) ("Haas Declaration").

required to be updated by 1996.¹¹ A CRMP was prepared in 1977 for the Chattooga and last updated in 1980 (“1980 Chattooga CRMP”). Since 1980, the 1980 Chattooga CRMP has not been updated, and no new CRMP has been prepared. The three Decision Notices are not consistent with the out-of-date plan.¹²

Without a current CRMP for the Chattooga decisions regarding river management are by definition arbitrary. “The absence of a predetermined plan that sets forth allowable degrees of intrusion upon the river’s ORV’s renders [a management agency’s] claim of no significant impact on the river’s ORV’s arbitrary because the basis for that determination is lacking.”¹³ The Forest Service may assert that the effects of its revised management of recreation in the Chattooga Wild and Scenic River Corridor are “*de minimus* or are justified by the overall good accomplished or that, on the balance, the project enhances the river’s ORV’s. However, absent some objective, pre-determined criteria for describing and assessing such impacts, the assertion is merely a post hoc justification for project outcomes.”¹⁴

The 2012 EA and the Decision Notices address only management of the upper 21-mile portion of the Chattooga WSR Corridor, yet,

resources [sic] uses and ORVs in one segment affect, and are affected by, those in other segments. Certainly visitor capacity decisions in one segment can significantly affect visitor capacity decisions in other segments in order to respond fairly and equitably to diverse public demands and values. Partitioning of the Chattooga Wild and Scenic River for the purpose of revising the recreation management direction for only

¹¹ “For rivers designated before [1986], [16 U.S.C. § 1274] (d)(2) requires review of the CRMP to determine if it conforms to Section [1274](d)(1). This provision allowed ten years to update pre-1986 plans through the planning processes of river-administering agencies. Note: This 10-year period expired January 1, 1996.”

US Forest Service, Report of the Interagency Wild and Scenic Rivers Coordinating Council: *Wild and Scenic River Management Responsibilities*, p. 8 (March 2002); see also *National Wild and Scenic Rivers System; Final Revised Guidelines for Eligibility, Classification and Management of River Areas* (the “Secretarial Guidelines”), 47 Fed. Reg. 39,454 (Sept. 7, 1982).

¹² Among other things, the 1980 Chattooga CRMP prohibits floating north of the Highway 28 Bridge, and allows dispersed camping and hiking. 1980 Chattooga CRMP, pp. 10, 11, 30. The Forest Service may argue that the plan is contained in the many NEPA documents it has produced over the years and in the three LRMPs, but a court rejected (repeatedly) a cross-referencing approach adopted by the Park service: “it is required to prepare a single plan, not issue supplemental volumes that simply crossreference thousands of pages of material from [earlier plans].” *Yosemite III*, 520 F.3d 1024, 1036-1037 (9th Cir. Cal. 2008).

¹³ *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202, 1256 (E.D. Cal. 1999).

¹⁴ *Id.*, 69 F. Supp. 2d at 1256.

21-mile portion [sic] is not justifiable and compromises the benefit of full, integrated and comprehensive planning.¹⁵

In the absence of a comprehensive planning framework for the Chattooga, the Forest Service is responding to the demands of the loudest and most insistent user group of the day, rather than carefully planning for sustainable and meaningful management of the River in the integrated and comprehensive manner prescribed by the WSRA. On this all groups are apparently in agreement. The quotation in the paragraph above is from the declaration of American Whitewater's own expert, Glenn Haas, Ph.D. Mr. Haas was also the expert for the prevailing (three times) plaintiff in the *Yosemite* litigation regarding management of the Merced Wild and Scenic River. He has worked both on the "limits of acceptable change" and the Recreation Opportunity Spectrum.

The *Yosemite III* Court found inadequate a "plan" that was ostensibly contained in multiple volumes crossreferencing thousands of pages of material from Yosemite National Park's Comprehensive Management Plan (the Park Service equivalent of a Forest Service LRMP).¹⁶ Here the situation is actually worse, since management of the Chattooga is contained within *three* LRMPs, and there is no central document providing crossreferences.¹⁷ This places a tremendous and unreasonable burden on members of the public wishing to participate in the decision-making process.¹⁸

3.2 Current capacity guidelines are arbitrary and permit degradation.

The WSRA requires that the CRMP for each river *shall* address user capacities.¹⁹ The Secretarial Guidelines define carrying capacity as "[t]he quantity of recreation use which an area can sustain without adverse impact on the [ORVs] and freeflowing character of the river area, the quality of recreation experience, and public health and safety."²⁰ The Forest Service must show that its capacity "[l]imits place 'primary emphasis' on the protection of the [Chattooga] River's 'esthetic, scenic,

¹⁵ See Haas Declaration, p. 4.

¹⁶ *Yosemite III*, 520 F.3d 1024, 1037 (9th Cir. Cal. 2008)

¹⁷ See Haas Declaration, p. 4 (American Whitewater's expert complaining of the public burden presented by this situation).

¹⁸ An illustration of this difficulty is that changes to Chattooga WSR Corridor management are contained in three separate Decision Notices and three separate LRMPs. In this appeal, from time to time only one or two of the Decision Notices have been referenced when the changes to all three are identical or nearly so. **The National Forests and appeal deciding officer should infer when reference is made to one or two of the Decision Notices that the other one or two is intended to be included as well, unless there is specific direction to the contrary.**

¹⁹ 16 USCS § 1274(d)(1).

²⁰ Secretarial Guidelines at 39,455.

historic, archeologic, and scientific features’ as required by § 1281(a).²¹ Recreation is not on this list. The CRMP must establish a “concrete measure of use.”²² Caps can be based on facility limits, so long as it has been shown that those limits describe an actual level of visitor use that will not degrade the river.²³ The direction for establishing capacity applies to both interim and final limits.²⁴

The capacity guidelines for the Upper Chattooga WSR Corridor are based on 2007 parking lot capacity. A range of capacities was not examined (also a violation of the National Environmental Policy Act, “NEPA”).

The Forest Service “has a responsibility under the ‘protect and enhance’ requirement of the WSRA to address both past and ongoing degradation.”²⁵ It has failed to explain how 2007 parking area in the Upper Chattooga correlates to protection of the esthetic, scenic, historic, archeologic, and scientific features of the Upper Chattooga WSR Corridor, especially given existing degradation of the Chattooga WSR Corridor. For example:

- Canoeing, rafting, and kayaking use on the Chattooga WSR River has already been identified as an example of where the “facilities and resources are being stretched to capacity.”²⁶
- Litter, sediment, and lack of solitude plague all parts of the Chattooga WSR Corridor.²⁷
- The Forest Service classifies the Chattooga River as water quality “impaired” or “Functioning at Risk.”²⁸
- Proposed access points are already eroded.²⁹

²¹ *Yosemite III*, 520 F.3d 1024, 1036 (9th Cir. Cal. 2008).

²² *Friends of Yosemite Valley v. Norton* (“*Yosemite I*”), 348 F.3d 789, 797 (9th Cir. 2003); *Friends of Yosemite Valley v. Scarlett*, 439 F. Supp. 2d 1074 (E.D. Cal. 2006), aff’d sub nom. *Yosemite III*, 520 F.3d 1024 (9th Cir. 2008); *Yosemite III*, 520 F.3d 1024, 1039 (9th Cir. 2008).

²³ *Id.*

²⁴ *Id.*

²⁵ *Yosemite III*, 520 F.3d 1024, 1035 (9th Cir. Cal. 2008).

²⁶ Sumter National Forest, *Recreation Supply and Demand: The Sumter National Forest’s Place in Outdoor Recreation in South Carolina*, p. 15.

²⁷ Doug Whittaker, Ph.D. and Bo Shelby, Ph.D., *Capacity & Conflie on the Upper Chattooga River* (June 2007) (“Integrated Assessment”); Haas Declaration.

²⁸ See U.S. Forest Service, Watershed Condition Framework (available at: <http://www.fs.fed.us/publications/watershed/>) (“Watershed Condition Framework”)(last accessed March 14, 2012).

²⁹ See Attachment B, photo of erosion on non-system trail approach to Green Creek access (“Green Creek Access”), Attachment C, photo of undercut bank at large rock along Green Creek access “trail” likely to be used as a put-in by boaters (“Green Creek Bank”), Attachment D, photo of heavy riparian impact downstream of the bridge at Burrell’s Ford (“Burrell’s Ford Riparian”).

- The interim boating plan will allow use of non-system trails and creation of put-ins and take-outs by users. Non-system trails are more likely to contribute to sediment loading, yet there is no differentiation between capacity limits for the interim period and the period to follow when users are guided to designated trails. By definition, the capacity limits must be arbitrary if they stay the same despite very different access scenarios.
- The Forest Service declined to allow any boating on the tributaries above Highway 28 “because of concerns regarding large woody debris, native brook trout restoration, vegetation removal, increased encounter levels, user-created trails, as well as enforcement and management issues.”³⁰ No reason has been given why these concerns exist for tributaries but not for the main stem of the Chattooga WSR Corridor.

Courts have invalidated capacities based on facility levels set to some arbitrary point in time, such as facilities existing at the time of designation, absent a demonstration that those limits are “protective of ORVs or satisf[y] the user capacity component of the required CMP.”³¹ In addition to the degradation caused by existing uses, the National Forests now proposed to add an additional use, rendering even more arbitrary the choice to tie resource protection to existing parking. Nowhere is there even any estimate of how many boaters existing parking facilities would accommodate. This issue could not have been considered at the time of construction of the parking lots as boating was a prohibited activity at that time.

The choice of parking lot capacity as the limiting factor for recreation on the Upper Chattooga is further confused by plans to construct a new parking lot of undisclosed size at the non-system County Line Road/Trail and approximately thirty spaces in the vicinity of the Highway 28 bridge.³² It is unclear how users of these new facilities will affect capacity. It is also unclear how users following the Forest Service’s direction to park on the road instead of in parking areas will be addressed in the proposed capacity monitoring.³³ What is clear is that the Forest Service is prepared to take on these activities with minimal additional consideration for their impacts to the Chattooga WSR Corridor as the Forest Service has already begun to bulldoze the undesignated County Line Road/Trail as of early March.

3.3 Capacity limits as guidelines do no actually trigger management action before degradation occurs.

The capacity “limits” for the Chattooga for all user groups on the Upper Chattooga have been designated as “guidelines” instead of enforceable “standards.” In setting

³⁰ GADN, p. 11.

³¹ *Yosemite III*, 520 F.3d 1024, 1035 (9th Cir. Cal. 2008); *see also Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202, 1256 (E.D. Cal. 1999), *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630 (9th Cir. 2004).

³² NC SOPA for 01/01/2012 to 03/31/2012; 2012 EA, p. 383.

³³ *See* Attachment E, “Forest Service Boating Webpage.”

capacities, “[a] standard must be chosen that does in fact trigger management action before degradation occurs.”³⁴ In Yosemite Valley, a management plan was found lacking because “an early warning sign [that] may call for the implementation of proactive management does not provide much assurance that such implementation will occur.”³⁵ A plan that never requires management action because capacity limits are unenforceable guidelines provides no such assurance and is a violation of the WSRA.

As amended, the LRMPs for the three forests define standards and guidelines. “Standards are quantifications and qualifications of the acceptable limits within which general direction is implemented.”³⁶ “A ‘guideline’ is defined as ‘a generally preferred or advisable course of action or level of attainment designed to promote achievement of goals or objectives.’”³⁷ The Forest Service regularly argues that guidelines are not enforceable.³⁸ The Decision Notices and existing LRMPs purport to set capacity for the Chattooga WSR as follows:³⁹

<u>Standards</u>	<u>Guidelines</u>
Upper Chattooga	
<ul style="list-style-type: none"> • <i>Commercial Activity</i>: No commercial boating above Highway 28 • <i>Group Size</i>: Above the Highway 28 bridge, 6 persons per boater group, with a minimum group size of two craft, 12 persons per group on trails, 6 persons per group in campsites, except in designated large group campsites, 4 persons per angling group. 	<ul style="list-style-type: none"> • <i>Number of Groups/People</i>: <ul style="list-style-type: none"> ○ Number of frontcountry groups and people at one time ○ Average groups and people per day for backcountry groups
Lower Chattooga	
<ul style="list-style-type: none"> • <i>Number of Groups/People</i>: establish the maximum number of people allowed per weekend and holiday for self-guided use⁴⁰ • <i>Adaptive Management Triggers</i>: Triggers for a reservation system, should self-guided use exceed capacity for expressed periods of time⁴¹ 	<ul style="list-style-type: none"> • None

³⁴ *Yosemite III*, 520 F.3d 1024, 1034 (9th Cir. Cal. 2008). The Forest Service Directives, require the same thing--that management plans for Wild and Scenic Rivers “[i]nclude specific and detailed management direction necessary to meet the management directives.” Forest Service Manual (“FSM”) § 2354.32.3.

³⁵ *Yosemite III*, 520 F.3d 1024, 1034 (9th Cir. Cal. 2008) (emphasis added).

³⁶ Nantahala LRMP, p. III-8 (emphasis added).

³⁷ NCDN, p. A-17. See also GADN, p. A-5, SCDN, p. A-5.

³⁸ See, e.g., *Earth Island Inst. v. Carlton*, 626 F.3d 462, 473 (9th Cir. Cal. 2010).

³⁹ NCDN, A-17, GADN, A-1.

⁴⁰ Sumter 2004 LRMP, pp. 3-11 to 3-12.

⁴¹ *Id.*

The adaptive management plan states that use in excess of 2007 vehicle counts “could” trigger adaptive management but does not describe what that management would be or how changes to parking lot configuration and capacity will be scaled to 2007 vehicle counts.⁴²

No reason has been given why capacities are standards for the Lower Chattooga WSR Corridor but only guidelines on the Upper Chattooga WSR Corridor.

3.4 The proposed adaptive management provides neither specific indicators nor standards.

The WSRA recognizes that “[m]anagement plans for any [WSR] may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.”⁴³ The Decision Notices purport to “[d]evelop a monitoring program to detect when use is approaching capacities and develop more precise relationships between the amount of use and impacts; if monitoring reveals undesired consequences, adaptive management will trigger actions to keep use levels from exceeding capacity.”⁴⁴ In reality, the adaptive management framework described in the 2012 EA and the Decision Notices would never require a management response. This is a violation of the WSRA, which requires a response to environmental degradation before it occurs.⁴⁵

The Park Service manages the Merced Wild and Scenic River. It proposed a user capacity program establishing procedures for monitoring conditions of park resources and visitor experiences--the Visitor Experience and Resource Protection (“VERP”) framework—to manage the Merced River. The VERP was an adaptive management framework. It

calls for management action when indicators reflect that desired conditions have fallen below standards, but the plan provided neither specific indicators nor standards. Instead, the Park Service offered example indicators for protecting biological and recreational ORVs from excessive degradation due to overuse, such as measuring the percentage of bare ground or exposed roots in a particular area and the number of people encountered on a trail within a particular time frame.⁴⁶

Courts in the Ninth Circuit repeatedly found this approach inadequate.

⁴² SCDN, p. A-5.

⁴³ 16 U.S.C. § 1281(a)

⁴⁴ *See, e.g.*, GADN, p. 2.

⁴⁵ *Yosemite III*, 520 F.3d 1024, 1033-1034 (9th Cir. Cal. 2008).

⁴⁶ John Cathcart-Rake, *The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River’s User Capacities*, 39 *Envtl. L.* 833, 849-850 (Summer, 2009).

For the Chattooga, the three forests have proposed adaptive management with problems similar to those in the VERP. For example:

- Monitoring for the Chattooga WSR Corridor asks the question whether endangered, sensitive, and locally rare plant species or aquatic habitats are being “affected” by recreation use, additional large woody debris (LWD), or removal of LWD and states that there will be annual monitoring for two years and “periodically thereafter.”⁴⁷ No specific indicators or standards to measure effects are proposed. No baseline is described. There is no guidance regarding how often periodic monitoring will occur or what it will entail. There are no triggers of management action based on monitoring results. In short, this is not actually an adaptive framework.
- Monitoring also asks the questions: “[a]re at-one-time vehicle counts at frontcountry and backcountry parking areas changing,” what is the proportion of recreation use by type of visitor, and how this use is related to the vehicle count. Again, there are no descriptions of what monitoring results would trigger a change in management. In addition, the Forest Service is adding parking lots (indeed, already bulldozing one at County Line Road/Trail without public input), and there is no discussion of how new parking will impact the actual, physical parking capacity or how it will impact the accuracy of capacity monitoring.
- The proposed monitoring is focused on summer season, when boaters cannot legally be present, and so will say little about the impacts of that new use.
- There is baseline on the number of log jams currently on the Upper Chattooga WSR Corridor.⁴⁸
- There is no budget for adaptive management.⁴⁹
- Unlike on the Lower Chattooga WSR Corridor, there are no triggers for more aggressive management on the Upper Chattooga WSR Corridor.⁵⁰

4 Wilderness

A substantial portion of the Chattooga WSR Corridor overlaps with the Ellicott Rock Wilderness. For those portions of the Corridor, the provisions of both the Wilderness Act and the Wild and Scenic Rivers Act apply with respect to both the River and to its immediate environment. In case of conflict between the provisions of these Acts the more restrictive provisions shall apply.⁵¹

Under the Wilderness Act, “wilderness” is defined as “an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”⁵² In addition to the obvious physical characteristics these words

⁴⁷ SCDN, p. A-3. *See also* SCDN, pp. A-7, A-8.

⁴⁸ 2012 EA 350.

⁴⁹ *See* section on Enforcement below.

⁵⁰ *See* Decision Notice for Amendment 14 to the Sumter LRMP 2002.

⁵¹ 16 U.S.C. § 1281(b); FSM § 2354.42e.

⁵² 16 U.S.C. § 1131(c).

evoke, the Act explicitly defines wilderness by the “outstanding opportunities for solitude” it offers.⁵³

An area’s ability to provide solitude depends on a current user’s perception of other users around him — not just on the physical characteristics of the land. See American Heritage Dictionary of the English Language 1655 (4th ed. 2000) (defining “solitude” as “The state or quality of being alone or remote from others”); Oxford English Dictionary (online version June 2011) (defining “solitude” as “The state of being or living alone; loneliness; seclusion; solitariness (of persons)”).⁵⁴

In wilderness areas, the Forest Service must resist the urge to manage for multiple use. Unlike other areas of national forests, “which are generally managed to sustain a variety of uses, wilderness areas must be managed to preserve their wilderness character. Only certain recreational uses are appropriate in wilderness areas.”⁵⁵ “Where a choice must be made between wilderness values and visitor or any other activity, preserving the wilderness resource is the overriding value. Economy, convenience, commercial value, and comfort are not standards of management or use of wilderness. The overarching concept is to preserve natural conditions and wilderness character.”⁵⁶ And mere maintenance is not the goal. The Forest Service’s admirable Wilderness Management policy is to always work toward *closing* the gap between the attainable level of wilderness purity and the less pure, human-influenced reality that exists on each wilderness.⁵⁷

⁵³ *Id.*

⁵⁴ *Mont. Wilderness Ass’n v. McAllister*, 666 F.3d 549, 556 (9th Cir. Mont. Dec. 1, 2011)

⁵⁵ *Id.* at 552; *see also Greater Yellowstone Coalition v. Timchak*, 2006 U.S. Dist. LEXIS 85067, 17-19 (D. Idaho Nov. 21, 2006) (“This balancing of competing interests – ‘growth management’--is the traditional province of the Forest Service,” but it is not appropriate where the objective is the preservation of wilderness values.

⁵⁶ FSM § 2320.6 (emphasis added); *see also Yosemite III*, 520 F.3d 1024, 1036, n. 6 (quoting *High Sierra Hikers Ass’n v. Blackwell* (“*High Sierra Hikers*”), 390 F.3d 630 (9th Cir. 2004)) (The Forest Service may not “elevate[] recreational activity over the long-term preservation of the wilderness character of the land.”).

⁵⁷ FSM § 2320.6.

Where management fails to prevent degradation and wilderness areas begin to show damage from overuse, the Forest Service must “take the next step to actually protect those areas by lowering the allowed usage.”⁵⁸ In the Ellicott Rock Wilderness Area there are already signs that recreational use is degrading the wilderness character of the area:

- There are seventeen active erosion points (at trails, campgrounds and stream banks mostly) in the Ellicott Rock section of the Chattooga WSR Corridor;⁵⁹
- There are forty campsites in the wilderness area, mostly within fifty feet of the River, ranging in size up to 11,775 square feet. These “lack proper design and are not maintained” and are causing “unacceptable resource damage;”⁶⁰ and
- Burrells Ford, even at present use levels, “is a chronic source of sediment to the tributaries and the Chattooga River itself.”⁶¹

The above degradation diminishes the untrammelled character of the wilderness. This should have been considered in the 2012 EA, but it was not.⁶² Capacities must be set and enforced to prevent the continued degradation of the wilderness-designated area.

In addition to the Wilderness Act, the National Forest Management Act governs management of wilderness areas. Management of any national forest must be consistent with its LRMP. Avoiding the requirements of the LRMPs in an effort to allow “interim” boating immediately, or longer term without proper protection, would be arbitrary and capricious. Examples of how the activities permitted by the Decision Notices are not consistent with the LRMPs for the National Forests include:

- The Nantahala LRMP sets standards for encounters in Wilderness based on trail access type. Where there are no trails, as along long stretches of the Chattooga in the Ellicott Rock Wilderness, encounters are set to an 80% chance of 0 per day.⁶³ The Decision Notices fail to set enforceable capacities that are sufficiently low to ensure compliance with these standards which were designed to protect wilderness-appropriate levels of solitude.
- The Nantahala LRMP directs that trails are to be constructed and maintained to protect soil, water, vegetation, visual quality, user safety and long-term maintenance.⁶⁴ The Chattahoochee LRMP requires that trails in wilderness areas be designed, constructed, reconstructed and maintained “to the

⁵⁸ *High Sierra Hikers*, 390 F.3d 630, 648.

⁵⁹ 2012 EA, p. 274.

⁶⁰ *Id.* at pp. 274, 306.

⁶¹ *Id.* at p. 275.

⁶² *Id.* at p. 388.

⁶³ Nantahala LRMP Land and Resource Management Plan, Nantahala and Pisgah National Forests, Amendment 5 (“Nantahala LRMP”), p. III-101 (1994).

⁶⁴ *Id.* at p. III-104.

minimum standard necessary to minimize or prevent resource damage.”⁶⁵ Encouraging user created trail use, creation by users of put-ins, take-outs, and portage trails is not consistent with this direction. The suspicious timing of the bulldozing of County Line Road/Trail suggests the Forest Service intends to use this non-system rough, wide sediment source as an access point.

- The Nantahala LRMP requires that within wilderness areas, the Forest Service must “[p]rovide maximum protection for known threatened and endangered species.”⁶⁶ The chosen management of the Upper Chattooga “may” impact the endangered rock gnome lichen, *Gymnoderma lineare*.⁶⁷ Allowing a use that it is known may impact an endangered species, when that use could easily be avoided, is inconsistent with the Wilderness Act and the LRMP.
- Any access to wilderness in the Chattahoochee is supposed to be developed in compliance with an approved wilderness plan.⁶⁸ There is no reference in the 2012 EA to compliance with any wilderness plan.

The interim boating plan would encourage user creation of put-ins, take-outs and approach trails. This is not consistent with the wilderness objectives in the LRMPs for the National Forests, nor is it consistent with Forest Service’s wilderness and trail system policies which sets design parameters for wilderness access trails, including, for example:

- Appropriate trail width⁶⁹
- Appropriate number of encounters⁷⁰

5 NEPA

5.1 *The “interim” plan to allow boating put-ins and take-outs has not been evaluated pursuant to NEPA.*

Generally speaking LRMPs are planning, not implementation, documents.⁷¹ However, in this case the National Forests are treating their amendments as both in a disingenuous shell game that disregards the requirements of NEPA and National Forest Management Act duties for implementation actions.⁷² The Forest Service did

⁶⁵ Land and Resource Management Plan: Chattahoochee-Oconee National Forests (“Chattahoochee LRMP”), p. 3-11 (January 2004).

⁶⁶ Nantahala LRMP, p. III-106.

⁶⁷ 2012 EA, p. 360.

⁶⁸ Chattahoochee LRMP, p. 3-12.

⁶⁹ See FSM § 2323, Forest Service Handbook (“FSH”) § 2309.18 Ch. 20.6-1; *see also* FSH 2309.18 Ch. 23.11-Exhibit 01 (design tread width for wilderness).

⁷⁰ *See, e.g.*, Nantahala LRMP, p. III-101.

⁷¹ *See Sierra Club v. Robertson*, 28 F.3d 753, 758 (8th Cir. 1994).

⁷² *See* Attachment F, “Self-Registration Floating Permit;” Forest Service Boating Webpage; Attachment G, “Boating Press Release;” permit telephone conversation of

not evaluate site-specific implementation activities in the 2012 EA, saying that work would be completed later.⁷³ As a result, the 2012 is insufficient to cover the implementation actions described in the Decision Notices. Nevertheless, without any additional public involvement, the Forest Service has taken implementation actions:

- Placed kiosks for boater registration and education
- Encouraged the bulldozing of a road on a nearly decade-old timber sale in precisely the location where it proposes off-system access, and⁷⁴
- Announcing that the Upper Chattooga WSR Corridor is open for boating.⁷⁵

While these actions were selected arbitrarily for immediate implementation, other obvious implementation elements have been delayed:

- Choosing appropriate access routes,
- Issuing appropriate closure orders so that capacities can be enforced,
- Putting in place a pre-accident plan and coordinating with local search and rescue teams,
- Establishing Chattooga WSR Corridor-wide safety requirements, and
- Establishing monitoring protocols.

The Decision Notices purport to allow boating “in the interim,” before put-ins and take-outs are designated, from “existing trails” that may or may not be designated/system trails, and at unspecified and non-designated locations along greater than three miles of noncontiguous river bank, specifically:

- Within one-quarter mile downstream of the Green Creek confluence (0.5 miles of riparian area),
- Within 500 feet of the Norton Mill Creek confluence (0.5 miles of riparian area),
- Within one-quarter mile of Bullpen Bridge (1 mile of riparian area),
- Within one-quarter mile of Burrells Ford Bridge (1 mile of riparian area), and
- Within one-quarter mile downstream of the Lick Log Creek confluence (0.5 miles of riparian area) (collectively, “non-system riparian access zones”)⁷⁶

It is unclear for how long this “interim” plan would last, but because this “interim” plan was not analyzed in the 2012 EA it is not viable for any period of time.

Paradoxically, the more complex the NEPA process for designating trails, parking,

Rachel Doughty with Chris Liggett, Director of Planning for the Southern Region (Feb. 2s, 2012); see *Sierra Club v. Kimbell*, 595 F. Supp. 2d 1021, 1024 (D. Minn. 2009).

⁷³ See, e.g., SCDN, p. 5 ¶ 9 (“Trails will be designated on future site-specific NEPA analysis”).

⁷⁴ It is curious that the Forest Service continues to try to use County Line Road/Trail without NEPA and Roads Analysis Process evaluation. See previous comments of Georgia ForestWatch on this boating issue (all of which are incorporated herein by reference and should already be a part of the administrative record for this project).

⁷⁵ Self-Registration Floating Permit.

⁷⁶ NCDN, p. A-16. The GADN and SCDN contain the same list.

and put-ins and take-outs, the longer the unanalyzed “interim” plan would be in operation. In fact, the Forest Service has already encouraged the bulldozing of County Line Road/Trail without additional NEPA.⁷⁷

Interim boating has not been analyzed pursuant to NEPA. What was analyzed in the 2012 EA and as part of selected Alternative 13A were the impacts of an alternative in which “[a]ll put-ins and take-outs would be designated and maintained to minimize sediment input to the river.”⁷⁸ Based on the premise that only designated trails, put-ins, and take-outs would be used, the 2012 EA concluded that “[n]one of the alternatives are [sic] likely to create unacceptable direct, indirect or cumulative increases in sediment across the Chattooga watershed.”⁷⁹ Access by use of non-system riparian access zones has not been analyzed.

The Forest Service opened the Upper Chattooga WSR Corridor for boating on March 16, 2012.⁸⁰ The press release of Ranger Paul Bradley (“March 2012 Boating PR”) and the Self-Registration Floating Permit for the interim period contain even less direction than the Decision Notices. For example, the March 2012 Boating PR does not describe even the inadequate non-system riparian access zones, instead saying “boating is allowed:”

Starting or ending only at specific put-ins and takeouts
as outlined on the self-registration permit:

- Put-ins: downstream of the Green Creek confluence in North Carolina; Norton Mill Creek confluence in North Carolina; Bullpen Bridge in North Carolina; and Burrells Ford Bridge in Georgia.
- Takeouts: Norton Mill Creek confluence in North Carolina; Bullpen Bridge in North Carolina; Burrells Ford Bridge in Georgia; and Lick Log Creek confluence in South Carolina.

The Self-Registration Floating Permit states that “[b]oaters must use only the designated put-in or takeout locations,” which is a present impossibility given the definition of “designated” and the actual existing access consisting only of non-system riparian access zones.

Allowing arbitrary user-created access is a significant deviation from that assumed starting point and leaves unanalyzed significant impacts. The 2012 EA identifies

⁷⁷ This temporary road must be thoroughly closed following any timber harvest activity.

⁷⁸ 2012 EA, p. 327, *see also, e.g.* 2012 EA, pp. 39, 233, 297, 328, 329.

⁷⁹ *Id.* at p. 297.

⁸⁰ *See* Self-Registration Floating Permit.

user-created features as “chronic sediment sources.”⁸¹ It describes user-created trails as those that:

are created by forest visitors, often during recreational activities such as fishing, camping and hiking, or to access certain areas such as boating put-ins or take-outs or other specific points of interest. These trails are often poorly located, within close proximity to streams or streambanks, do not meet trail design specifications/standards, receive no maintenance and do not meet erosion control specifications. User-created trails often lead off a designated/system trail and go down steep slopes to a major stream or the Chattooga River.⁸²

The 2012 EA discusses dispersed recreation:

Dispersed recreation is especially detrimental to stream channels when located directly on streambanks. Impacts to vegetation in riparian areas can occur even with low to moderate usage levels. This user-created disturbance results in banks that are often denuded (stripped) of vegetation and increases the potential for erosion of soil into stream channels.

Sedimentation in stream channels is the primary indirect effect of erosion from dispersed recreation. The primary impact of sedimentation is a loss of quality habitat for aquatic organisms. Sediment can also increase turbidity, change stream temperature, alter substrate size and distribution and alter channel morphology.⁸³

All of this is made worse by the fact that the soils of the Chattooga area are described as having “high erosive potential” that may make them inappropriate even for well designed system trails.⁸⁴

⁸¹ 2012 EA, p. 297.

⁸² *Id.* at p. 53.

⁸³ *Id.* at p. 303.

⁸⁴ *Id.* at p. 300.

Table 1: User-created trails greater in areas where boating permitted.⁸⁵

Reach	Designated Trails within 100 ft. of River (mi)	User-created Trails within 100 ft. of River (mi)	Percentage of Trails that are User-created Trails within 100 ft. of River	Designated Trails within 20 ft. of River (mi)	User-created Trails within 20 ft. of the River (mi)	Percentage of Trails that are User-created Trails within 20 ft. of River
Upper Chattooga (21 miles)	9	9.8	52%	1.22	1.41	54%
Lower Chattooga (36 miles)	5.7	12.7	69%	.6	3.9	87%

The unanalyzed interim plan can be expected to *increase* the number of user-created trails near the Chattooga WSR Corridor. Downstream, where boating accounts for 95% of visitors to the Chattooga WSR Corridor, user-created trails very close to the River (within 20 feet) are much more common (see Table 1).⁸⁶ Even boaters who try to comply with the amended LRMPs for the National Forests may be at a loss without identified access trails and put-ins and take-outs—those unfamiliar with the area have no way of knowing if they are within the broad areas identified as available for the creation of user-created interim put-ins and take-outs, and may unwittingly expand the zones even beyond the more than three miles contemplated in the Decision Notices (but not analyzed in the 2012 EA).

An almost certain result of the interim access is many user-created spur trails in the non-system riparian access zones and beyond, and creation of multiple informal put-in and take-out locations within those zones based on user convenience and/or preference rather than resource suitability. Erosion from poorly located boater put-ins and take-outs is evident on the lower sections of the Chattooga WSR Corridor.⁸⁷ Some of the more obvious points of user-created access are already in poor shape, without the addition of boater use during rainy weather when soils are more susceptible. At Green Creek, existing trails are badly eroded and the most obvious point to access the River is already undercut.⁸⁸ User trails already line the riparian area near Burrell's Ford, and would be expected to cause more sediment with use during rain events.⁸⁹

⁸⁵ See *Id.*, Tables 3.1-4 and 3.1-9.

⁸⁶ A 2002 survey reported that the primary purpose for 95% of the visits to the lower Chattooga was to “float” the river.

⁸⁷ See, e.g., Attachment H, photo of riparian damage at Earl's Ford put-in in the Lower Chattooga WSR Corridor, with clear evidence of significant bank erosion (“Earl's Ford Bank”).

⁸⁸ See, e.g., Green Creek Bank and Green Creek Access.

⁸⁹ Burrell's Ford Riparian.

County Line Road/Trail is neither a designated road nor a designated trail. As a temporary road not designated for another purpose, it should have been (or should be) obliterated, instead of offered as an access route to the Chattooga WSR Corridor.⁹⁰ This road is a known illegal access point to the Chattooga River by motorized vehicles. Further establishment on the landscape of this feature should not be encouraged. Nevertheless, this temporary road was bulldozed open on or around March 12, 2012, the Forest Service's Boating Webpage directs users to it by name, without mentioning that it is a non-system trail, and the Forest Service has placed a registration box a quarter of a mile from the road on this "trail" thereby necessitating that boaters use this "trail," all without further NEPA analysis.⁹¹ Appellants were told this was related to a timber sale.⁹² Because the timber sale of which this temporary road was a part was approved nearly a decade ago, the timing is suspicious.

5.2 The cumulative impacts of the decision to implement boating through these planning decisions have not been considered

NEPA requires the Forest Service not only to evaluate obvious, short-term impacts, but also the longer-term impacts that "when added to other past, present and reasonably foreseeable future actions regardless of what Forest Service (federal or non-federal) or person undertakes such other actions."⁹³ Where an agency has conceded it is aware of plans for future action; that it will have jurisdiction over that future action; and that it anticipates that it will be called upon to take those actions, it may not limit the scope of its review to exclude those future actions, particularly when those actions are intended as direct results of the central action.⁹⁴ Usually, it would be entirely appropriate to not consider the detailed impacts of access until a later date, but the Forest Service is treating the Decision Notices as implementation decisions, and management pursuant to that approach will cause the immediate use of the unanalyzed non-system riparian access zones, parking areas and roads by boaters and other users.⁹⁵ Already the National Forests are putting up kiosks, some at undesignated trails, and encouraging the bulldozing of a nonsystem access point (County Line Road/Trail). The impacts of these access decisions were not considered in detail in the 2012 EA, because they were supposedly going to be considered at a later time. Because the Forest Service knew its Decision Notices would lead to these additional actions, indeed apparently planned that it would,

⁹⁰ 16 USCS § 1608(b). Part of the White Bull Timber sale project was that this temporary road would be "closed and seeded after timber harvest activities are completed." White Bull EA, p. 25.

⁹¹ See Forest Service Boating Page and Boating Press Release.

⁹² Telephone conversation of Joe Gatins with Mike Wilkins (March 13, 2012).

⁹³ 40 C.F.R. § 1508.7.

⁹⁴ *Fla. Wildlife Fed'n v. United States Army Corps of Eng'rs*, 401 F. Supp. 2d 1298, 1312 (S.D. Fla. 2005).

⁹⁵ See Forest Service Boating Page and Boating Press Release.

analysis of their impacts should not have been delayed until some indefinite future date.

The specific implementation actions (designation of put-ins, take-outs, access trails, parking areas, and the placement of permit boxes, etc.), should they ever actually occur,⁹⁶ will require additional work to comply with NEPA and NFMA. So, for example, placing a permitting box should require consideration of where boaters registering at that location are likely to put in and take out, what trails they are likely to use, whether placement will encourage use of non-system trails and put-ins and take-outs, the maintenance state of those trails, whether there are endangered species in the area of the box, the trails, the put-ins, and the take-outs. Although implementation is taking place, none of this analysis has been done. This is an overt violation of NEPA, NFMA, and the Forest Service's own guidance materials.

The Forest Service plans to rely on non-system trails (e.g., County Line Road/Trail and Green Creek access) and non-system riparian access zones that do not meet Forest Service standards to implement its interim boating plan. It is already directing users to these trails on its website. In fact, it requires their use to access registration boxes.⁹⁷ This dubious plan is inconsistent with the Forest Service Manual which requires that the Forest Service "[f]ollow the direction in FSH 2309.18, Trails Management Handbook, chapters 10 and 20, when developing, reconstructing, or maintaining trails."⁹⁸ The Forest Service must "[a]pply the National Quality Standards for Trails in the planning, construction, maintenance, condition assessment, and management of NFS trails, in accordance with FSH 2309.18, section 15."⁹⁹ It must also "[c]onsider available resources and maintenance costs when deciding to construct new trails, reconstruct existing trails, or convert other types of routes to NFS trails."¹⁰⁰ The Forest Service cannot avoid these requirements by simply encouraging the public to develop a system of undesignated trails or encouraging a logger to skid out a "trail" at a time that is convenient to the Forest Service's illegal access plan.

⁹⁶ It is unclear what, short of a lawsuit, could be an incentive for the Forest Service to comply with NEPA. It is already implementing its boating plan fully. NEPA-compliance after-the-fact with a pre-determined conclusion is of no use to anyone.

⁹⁷ See Forest Service Boating Webpage

⁹⁸ FSM § 2353.25.1. See also FSH § 2309.18, Trail Management Handbook, chapter 30, for direction on preconstruction and reconstruction of NFS trails. As applicable, when constructing trails, comply with EM-7720-103, "Standard Specifications for Construction of Trails," and EM-7720-104, "Standard Drawings for the Construction and Maintenance of Trails," FSM § 2353.26.

⁹⁹ FSM § 2353.15.

¹⁰⁰ FSM § 2353.25.2.

5.3 *The Forest Service should have included management of the whole Chattooga WSR Corridor in one NEPA document.*

The Forest Service should consider the management of the entire Chattooga WSR Corridor at one time, because the WSR Act requires it, but also because NEPA requires it. "Segmentation of a large or cumulative project into smaller components in order to avoid designating the project a major federal action has been held to be unlawful."¹⁰¹ Post hoc justification of project after project in the absence of a CRMP and a comprehensive NEPA analysis of river management is unsupportable.

5.1 *The Forest Service should have prepared an EIS*

The Eleventh Circuit has adopted a four-part test to determine whether an agency's decision not to prepare an EIS is arbitrary and capricious: (1) the agency must have accurately identified the relevant environmental concerns; (2) the agency must then take a "hard look" at those concerns when preparing the EA; (3) the agency must make a convincing case for a finding of no significant impact; and (4) if the agency does find an impact of true significance, preparation of an EIS can be avoided only if the agency finds that changes or safeguards in the project sufficiently reduce the impact to a minimum.¹⁰²

An agency's decision not to prepare an EIS is unreasonable "if substantial questions are raised regarding whether the proposed action may have a significant effect upon the human environment" or "if the agency fails to supply a convincing statement of reasons why potential effects are insignificant."¹⁰³ "Significantly" as used in NEPA requires considerations of both context and intensity."¹⁰⁴ Context for a site specific impact is usually measured by effects in the locale, and intensity refers to the severity of the impact, including, specifically,

(3) Unique characteristics of the geographic area such as proximity to . . . wild and scenic rivers, or ecologically critical areas.

¹⁰¹ *Susquehanna Valley Alliance v. Three Mile Island Nuclear Reactor*, 619 F.2d 231, 240 (3d Cir. 1980); see also *Fla. Wildlife Fed'n v. United States Army Corps of Eng'rs*, 401 F. Supp. 2d 1298, 1313 (S.D. Fla. 2005)(internal citations and quotations omitted).

¹⁰² *Fla. Wildlife Fed'n v. United States Army Corps of Eng'rs*, 401 F. Supp. 2d 1298, 1310 (S.D. Fla. 2005).

¹⁰³ *Morgan v. Walter*, 728 F. Supp. 1483, 1488 (D. Idaho 1989)(internal citations omitted).

¹⁰⁴ 40 C.F.R. § 1508.27.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial. . . .

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(9) The degree to which the action may adversely affect an endangered or threatened species¹⁰⁵

An EIS should have been prepared to amend the three LRMPs for the National Forests because:

- The Decision Notices address management of a Wild and Scenic River Corridor and a wilderness area in one of the most biologically diverse areas in the Southeast.¹⁰⁶ Furthermore, this decision is being made in the absence of a CRMP. As discussed above, such decisions are considered post hoc and are viewed with suspicion by courts. The suspicion is heightened by the Forest Service's finding that boating on the tributaries to the Chattooga would be harmful to natural resources, would unacceptably increase user encounter levels and user-created trails, and would create enforcement and management issues.¹⁰⁷
- The impact of the Decision Notices is controversial. For example:
 - The 2012 EA's finding of no significant impact is based on the ability to fund campsite, trail, and road planning and maintenance. There is no evidence that such funding is forthcoming.
 - Dr. James T. Costa, director of the internationally acclaimed Highlands Biological Station of Western Carolina University, states "the upper Chattooga watershed area is a unique biological and cultural resource that is likely to suffer significant degradation through the human impacts associated with boating."
 - Former Chattooga District Ranger David Jensen sent an eight page letter in the last round of public comment, expressing his concern about, among other things: the adequacy of self-registration to provide accurate monitoring and, therefore, its ability to serve as a cornerstone of the proposed adaptive management; the lack of any

¹⁰⁵ *Id.*

¹⁰⁶ See Attachment I, Op-ed piece by Dr. James T Costa, Ph.D., director of the Highlands Biological Station (March 2007) ("Costa Op-Ed").

¹⁰⁷ SCDN, p. 6.

structure in the proposed adaptive management; the lack of agency resources to enforce the planned boating (citing the recent justification for closure of ORV trails and the inability to prevent boating currently even with the clear, simple ban in place); whether it is equitable to spend so much of such limited resources on such a small number of boaters when other users have recently been prohibited from engaging in their preferred use (ORVs) because of budgetary constraints; whether the agency has the budget to add new trails as proposed when it is closing them due to inability to budget for maintenance elsewhere on the forests; failure to include any law enforcement staff on the planning team; the legal adequacy of physical parking restrictions as a method of establishing capacity.¹⁰⁸

- Former Andrew Pickens District Forest Ranger Max Gates (1961-1972) concluded that even at the levels present in the 1970s, increasing boating usage “presented a threat to the quality of the wilderness experience available to non-boating users.”¹⁰⁹
- Former Andrew Pickens District Forest Ranger Jim Barrett stated that “based on 30 years of professional forestry experience in the Southeast. . . lifting the ban on boating above Highway [sic] 28 will damage the unique wilderness solitude experience and quality of wilderness Hiking [sic], nature watching, fly fishing and other outstanding recreational experience above Highway 28. Boaters already have access to the majority of the river and their usage of the river has impacted the quality of usage by non-boaters.”¹¹⁰
- Chris Liggett, the Director of Planning for the Southern Region of the Forest Service and a member of the Steering Team for the Chattooga River visitor capacity analysis process has questioned the capacity of the Forest Service to enforce other than a bright-line no boating rule because of resource limitations.¹¹¹
- The Forest Service has prohibited boating on tributaries that are not Wild and Scenic River- or wilderness-designated, because of concerns about harm to natural resources, unacceptable impacts to user encounter levels, user-created trails, and enforcement and management issues.¹¹²

¹⁰⁸ See Attachment J, comments of David W. Jensen, submitted to the Forest Service August 21, 2011 (“Jensen Comments”).

¹⁰⁹ See Attachment K, Affidavit of Max Gates (April 10, 2006) (“Gates Affidavit”).

¹¹⁰ See Attachment L, Affidavit of Jim Barrett (March 30, 2006) (“Barrett Affidavit”).

¹¹¹ See Attachment M, Declaration of Chris Liggett (July 7, 2006) (“Liggett Declaration”).

¹¹² SCDN, p. 6.

- For over thirty years the Forest Service has prohibited boating on the Upper Chattooga, and only changed its position after a very small user-group filed an appeal, sued the agency, and doggedly pursued access over the course of nearly a decade. This decision is particularly suspect because it has been made in the absence of a CRMP.
- The decision to limit the scope of analysis only to recreation and only to the upper 21 miles of the Chattooga WSR Corridor is controversial, especially in the absence of a single CRMP. The expert for boater group American Whitewater also believes that an EIS, and not just an EA is needed to address recreation and that it should cover the entire Chattooga WSR Corridor.¹¹³ Mr. Haas was the expert for the plaintiff in the *Yosemite* (Merced WSR) litigation, which prevailed *three times* against the National Park Service.
- The effects of the Decision Notices together with those of parking lot construction, user creation of trails that are anticipated to become designated trails, and shifting management of multiple recreation groups should have been considered together (especially since the “interim” boating plan could continue indefinitely). Furthermore, a single, integrated, CRMP should have been prepared for the Chattooga WSR Corridor sometime during the near decade the National Forests have dedicated to the issue of recreation management on the Upper Chattooga. The Forest Service is managing capacity on the Chattooga WSR through ad hoc amendments to the National Forests’ LRMPs undertaken at the instigation of user groups, rather than according to a CRMP, including those in the Decision Notices, and increases in capacity on the Lower Chattooga WSR Corridor a few years ago. This piecemealing of management of a Wild and Scenic River is illegal.
- Protected, endangered and threatened species are present, however, the Forest Service engaged in a clever triage to minimize the discussion of anticipated impact to these species. Birds, mammals, butterflies, and moths were not given detailed consideration because of their ability to flee disturbance.¹¹⁴ Reptiles and spiders were dropped because “they occur in rock outcrops, rocky talus slopes and other areas within the corridor which would be likely be unaffected by recreationists.”¹¹⁵ Furthermore, noting that recreation has increased over the years (by 2,200 percent in the case of boating on the Lower Chattooga WSR Corridor) and is expected to increase in the years to come, the Biological Evaluation (“BE”) concluded that cumulative impacts are nevertheless unlikely to occur, because there is only a “remote chance of trampling and scraping impacts targeting one particular species

¹¹³ Haas Declaration.

¹¹⁴ BE, p. 6.

¹¹⁵ *Id.* at p. 6.

over time.”¹¹⁶ Given these assumptions, it is a wonder that any impacts to species are ever evaluated!

An agency must generally prepare an EIS if the environmental effects of a proposed agency action are highly uncertain.¹¹⁷

Preparation of an EIS is mandated where uncertainty may be resolved by further collection of data, or where the collection of such data may prevent “speculation on potential ... effects. The purpose of an EIS is to obviate the need for speculation by insuring that available data are gathered and analyzed prior to the implementation of the proposed action.”¹¹⁸

The environmental effects of amending the LRMPs for the National Forests are highly uncertain, and will remain so, because:

- There is no CRMP for the Chattooga WSR Corridor, and so no comprehensive vision for management of the River against which to measure ad hoc decisions to increase capacity or change allowed uses.
- There is no estimate anywhere in the 2012 EA or the Decision Notices how many boaters may use the Upper Chattooga.
- Monitoring and enforcement capability is highly uncertain and so unlikely to yield reliable data or serve as a sound basis for future adaptive management.
- The Forest Service is uncertain how much large woody debris (“LWD”) cutting is likely to occur in the Ellicott Rock Wilderness and how this might impact scenery.¹¹⁹
- The Forest Service has not evaluated the impacts of its “interim” boating plan on protected, endangered, and threatened species, sedimentation, user experience, search and rescue, or law enforcement.
- It is unclear when, if ever, NEPA analysis of put-ins, take-outs, and access trails and parking will occur (bulldozing of County Line Road/Trail is already occurring without analysis).

6 Plan to allow boating self-registration above Highway 28 is illegal

“[U]nless authorized by a permit obtained through registration at Forest Service Registration Stations abutting the Chattooga River located at Highway 28, Low-Water Bridge, Earl's Ford, Sandy Ford, Highway 76, Woodall Shoals, or Overflow Bridge or unless authorized under special use permit” federal regulation prohibits:

¹¹⁶ *Id.* at p. 18.

¹¹⁷ *Wilderness Soc'y & Prairie Falcon Audubon, Inc. v. United States Forest Serv.*, 2012 U.S. Dist. LEXIS 22482, 19-20 (D. Idaho Feb. 21, 2012).

¹¹⁸ *Id.* (internal citations omitted).

¹¹⁹ 2012 EA, p. 233.

- “Using or occupying any area of the Sumter National Forest or the Chattahoochee National Forest abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description,” and
- “Entering, going, riding, or floating upon any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest in, on, or upon any floatable object or craft of every kind of description”¹²⁰

The Sumter LRMP prohibits the issuance of any new special use permits, “except for research and outfitter-guide operations in the wilderness-designated portion of the River.”¹²¹ Therefore, any boater planning on a trip that enters the South Carolina or Georgia portions of the Wild and Scenic River Corridor, cannot register at any station other than those listed in 36 C.F.R. § 261.77 unless in possession of a special use permit, and no special use permit may be issued for a trip that traverses the Ellicott Rock Wilderness in South Carolina.

Despite clear law to the contrary, the Forest Service has installed Registration Stations for boaters at the following, additional and unauthorized locations:

- Near Green Creek 0.25 miles down the Chattooga River Trail;
- Off the non-system County Line Road/Trail approximately 0.25 miles from Whiteside Cove Road;
- On the Chattooga Trail near Bullpen Bridge; and
- Near Burrells Ford Bridge on Forest Road 646.¹²²

7 Recreational Opportunity Spectrum

It is the Forest Service’s policy to use the Recreational Opportunity Spectrum (“ROS”) to guide recreational management of the national forests.¹²³ The basic assumption underlying the ROS is that quality in outdoor recreation is best assured through provision of diverse sets of opportunities. Providing a wide range of settings, varying in level of development and access, insures the broadest segment of the public will find quality recreational experiences, both now and in the future.¹²⁴ Allowing boating on the Upper Chattooga WSR Corridor flattens the regional recreational opportunity spectrum.

The Forest Service has confused the terms “equal” and “equitable.” In the 2012 Response to the 2011 EA Comments (p. 19), the Forest Service states that “In the

¹²⁰ 36 C.F.R. §§ 261.77 (a) & (d).

¹²¹ *Revised Land and Resource Management Plan, Sumter National Forest* (“Sumter LRMP”), p. 3-5 (January 2004).

¹²² Forest Service Boating Webpage.

¹²³ See FSM § 2310.3-2.

¹²⁴ Roger N. Clark and George H. Stankey, *The Recreation Opportunity Spectrum: A Framework for Planning, Management, and Research*, General Technical Report PNW-98 (1979), p. 4.

alternatives that allow boating, ‘...the number of boating groups anticipated on days when boating opportunities may occur are treated equitably as part of the total capacity for each reach—they are not singled out or treated any differently than existing user groups.’” This is not equitable access, it is equal access. Applied universally, it would require every part of the National Forests would have to be open to every use—a direct contradiction of the ROS.

Equitable use is the ability to access the area under the same rules everyone else must follow. The issue cannot be stated better than how the Forest Service argued it to the 11th Circuit Court of Appeals:

[people who boat] have the same ability as others to engage in a multitude of other recreational pursuits allowed throughout the Chattooga corridor. They are not prohibited from accessing the Headwaters of the Chattooga for recreational pursuits such as swimming, fishing, hiking, camping, and photographing, to name just a few. Nor is it true, as [boaters] claim, that they are being treated unfairly as the only individuals prohibited from engaging in their desired recreational pursuit on the Chattooga. As an initial matter, it is not the individual that is prohibited from accessing and recreating in the Chattooga corridor. Instead it is the recreational use or pursuit that is limited in order to strike a balance that protects and enhances the Recreation ORV. Many uses, not just floating, are prohibited or limited in the Chattooga corridor. For instance, although floating is only prohibited in a small section of the Chattooga, off-highway vehicle use and mountain bike use is prohibited throughout the Chattooga corridor and only allowed in specific areas on the forest. Likewise, there are numerous restrictions on fishing, camping, and horseback riding, among others.¹²⁵

The thirty plus year zoning of uses on the Chattooga established a diversity of recreational opportunity in the Chattooga Corridor, primarily by physically separating non-compatible uses. Boating-oriented management prevails on the lower 36 miles of the Chattooga WSR Corridor--up to 89,000 recreation visitor days dedicated to canoeing or kayaking in the Sumter National Forest have been logged in a single year—up to 95% of the users of the Lower Chattooga WSR Corridor. The Forest Service made the rational and reasonable management decision that visitors who wished to engage in fishing and solitude-dependent uses were more able to do so where boating was prohibited. This decision has proved enormously prescient as

¹²⁵ *American Whitewater v. Bosworth*, 2:06-CV-0074-WCO, Document 11, p. 22 (filed July 7, 2006).

boating has grown by 2,200 percent since the River was designated. Importantly, this decision was made in the context of preparing a comprehensive CRMP for the Chattooga WSR Corridor, as opposed to the recent decision to allow boating that was made only after years of legal battle with a small but persistent group of people wishing to use the National Forests for their particular favorite recreational pursuit.

As demand for limited access grows, all visitors to the Forests may have to limit their uses, or the very values that caused the area to be designated WSR and wilderness will be lost. Although the Decision Notices purport to divide users by time of year and flow use patterns, they have failed:

- March and April are the 4th and 3rd most popular backcountry fishing months of the year.¹²⁶ During the last half of March, angler visitation surges because spring insect hatches are strong and trout are actively feeding between 11 AM and 5 PM.¹²⁷ The April hatches are even stronger.¹²⁸
- Most college spring breaks are scheduled during the last 20 days of March and the Chattooga wilderness is always a popular “get away from it all” destination. Hiker and backpacker visitation continues to increase as April ushers in warming temperatures. Nature lovers and hikers come for the spring flowers and migratory birds.
- Visitation swells further with Easter break for public school students with their youth groups. The likelihood for March and April boating to cause recreation conflicts are obvious.
- Users seeking solitude and unleafed views seek out the quieter winter months to visit remote areas.

The National Forests have limited resources. Constructing parking areas, put-ins, take-outs, and registration boxes, and devoting limited law enforcement to facilitate a sport engaged in by a very small subset of the population is not equitable if it means that other recreational opportunities cannot be protected and a spectrum of uses across the region provided. The Appellants have always been supportive of putting the resource first, even if it means limiting their own access to the National Forests (e.g., setting enforceable user capacities; prohibiting horseback riding, biking, ORV use, and boating in sensitive areas; fishing and hunting restrictions; closing trails and campsites that are causing resource damage; reducing the number of roads throughout the National Forests; and limiting timber harvest). It is the Forest Service’s job to manage in a way that avoids a tragedy of the commons situation in these very well loved landscapes.

¹²⁶ GA Department of Natural Resources, *Roving Angler’s Survey* (1987).

¹²⁷ Integrated Report, pp. 86, 117.

¹²⁸ Integrated Report, pp. 14, 21.

8 Specific Resource issues

8.1 Large Woody Debris

The three Decision Notices purport to “[r]equire agency approval for large woody debris (LWD) removal.”¹²⁹ However, the BE says that there would be no LWD removal to accommodate recreation, and so concludes there would be no direct, indirect or cumulative impacts on sensitive species.¹³⁰ The LRMPs for the National Forests, as amended, do not in fact contain this restriction, and so the BE’s conclusion that there will be no indirect impacts from the removal of LWD is based on a faulty premise.¹³¹ Instead, the amendments allow removal at the discretion of the Forest Service.

The National Forests knows that LWD removal is correlated with boating and camping, but provide no set long term monitoring schedule (except on the Chattahoochee, which requires annual monitoring) and no clear and enforceable triggers of adaptive management triggers or direction.¹³² The amendments to the Sumter LRMP require LWD be monitored for only 2 years, and then allow it to be monitored “periodically” thereafter.¹³³ In NC, where the most sensitive stretches of the Chattooga are located, there is no minimum monitoring frequency and the monitoring elements and methods of collection may change without amending the plan.¹³⁴ This is not an adequate monitoring plan for adaptive management.

8.2 Sediment

The 2012 EA concludes without explanation that “[i]ncreased use by boaters would have minimal resource impacts” in discussing riparian impacts.¹³⁵ This optimism is not shared by Appellants. The 2012 EA describes the soils of the Chattooga area as having “high erosive potential.”¹³⁶ The same EA states that “[i]mpacts to vegetation in riparian areas can occur even with low to moderate usage levels,” and attempts no estimate of how many boaters might want to float the Chattooga while placing capacity limits for all users in guidelines instead of enforceable standards.¹³⁷ Once vegetation is lost, sedimentation from highly erosive soils will be hard to avoid.

Segments of the Upper Chattooga are already described as Impaired or Functioning at Risk.¹³⁸ Roads are a primary cause of the excessive sediment load causing this impairment. Nevertheless, the Forest Service proposes to encourage boaters to

¹²⁹ See, e.g., SCDN, p. 5 ¶12.

¹³⁰ BE, pp. 16, 18.

¹³¹ *Id.* at p. 16.

¹³² GADN, p. A-7; 2012 EA, p. 157.

¹³³ SCDN, p. A-3.

¹³⁴ See NCDN, pp. A-19 - A-21.

¹³⁵ 2012 EA, pp. 327-328.

¹³⁶ *Id.* at pp. 300, 303.

¹³⁷ *Id.* at pp. 300, 303.

¹³⁸ See Watershed Condition Framework.

access the river using non-system old, poorly placed logging roads to access the River, and to construct a new road and parking area at County Line Road/Trail to accommodate anticipated boater demand. In fact, the County Line Road/Trail is already being bulldozed, despite not being on the transportation atlas for the Nantahala National Forest.

There is no discussion of the fact that the flow restrictions as well as the nature of the sport means that boaters would use the area, including the riparian area, during or right after rain events. Impacts will be exacerbated by the fact that the Forest Service's "interim" plan (of unlimited duration) is to allow boaters to use non-system trails or create their own.¹³⁹ The impact of such use is not limited to put-ins, take-outs, and approach trails. During the trial float in 2007 there were multiple portages.¹⁴⁰ There are no enforceable limits on the number of boaters per day, and so no estimate of how many people might be dragging boats down user-created trails to slide from erosive banks into the Chattooga. Once created, trails and denuded banks will be used by visitors to the forests other than boaters, further fixing their permanent place on the landscape, regardless of how poorly placed from a resource standpoint.

8.3 Plants & Animals

The BE upon which the Decision Notices rely is inadequate, as discussed above in Section 5.1. The 2012 EA is less circumspect, concluding that increased portaging in inaccessible areas could eliminate populations five sensitive and four locally rare species: *Lophocolea appalachiana*, *Lejeunea bloomquistii*, *Cephalozia macrostachya* ssp. *australis*, *Plagiomnium carolinianum*, *Lophocolea appalachiana*, *Plagiochila sullivanii* var. *sullivanii*, *Chiloscyphus muricatus*, *Homalia trichomanoides*, *Bryoxiphium norvegicum*, *Listera smallii*.¹⁴¹

All protected, endangered, and threatened species are listed in a table in the 2012 EA.¹⁴² For all but the federally endangered species, *Gymnoderma lineare*, the table indicates that there will be indirect or direct effects; it states that there "may" be impacts on the endangered species, *Gymnoderma lineare*, but that these impacts are not likely to adversely affect.¹⁴³ Because the federal endangered status comes with obligations that do not attach when there are impacts to the other 26 species in the list, this conclusion is somewhat suspect. The Fish and Wildlife Service based its concurrence with the Nantahala National Forest's "not likely to adversely affect"

¹³⁹ See Section 5.1 above.

¹⁴⁰ Don Kinser, *Rediscovering the Headwaters* (2007).

¹⁴¹ 2012 EA, p. 365.

¹⁴² *Id.* at p. 360.

¹⁴³ *Id.* at p. 360.

determination on an understanding that specific monitoring of *Gymnoderma lineare* would occur annually:¹⁴⁴

Specific monitoring requirements for the Rock Gnome Lichen will include:

1. A botanist familiar with rock gnome lichen identification and the exact location along the main stem of the Chattooga River would annually assess the subpopulation.
2. The evaluation would record the presence of any refuse, any visible destruction of the lichen mat, or any other indication on the level of visitation near the subpopulation on the eastern bank of the Chattooga River.
3. Monitoring would include recording data for the *Gymnoderma lineare* rapid assessment field form as a reference metric for assessing any change in population size or vigor. Data recorded would include the temporary plot sizes, an abundance cover class for each plots and an assessment on the vigor/health for each plot.
4. The USFS would provide maps of any additional located subpopulations to the Asheville Field Office of the U.S. Fish and Wildlife Service.
5. An annual monitoring report would be supplied to the Asheville Field Office as part of the more comprehensive annual threatened and endangered species monitoring report.¹⁴⁵

This specific monitoring is not included in the Nantahala LRMP amendment.

Monitoring of impacts to plants and animals in general needs to be more clearly defined. The conclusion of the BE is dependent on annual monitoring occurring.¹⁴⁶ However, monitoring of plants in South Carolina and North Carolina will only be required for the first 2 years.¹⁴⁷

The Fish and Wildlife Service has entered into a settlement agreement with the Center for Biological Diversity (“CBD”) that requires consideration of listing of

¹⁴⁴ Letter from Fish and Wildlife Service to Marisue Hilliard (December 6, 2011) (“NC FWS Letter”).

¹⁴⁵ *Id.* (emphasis added).

¹⁴⁶ BE, p. 19.

¹⁴⁷ SCDN, p. A-3, NCDN, pp. A-20-A-22.

hundreds of species. At least five species that are part of CBD's settlement that are located in the Chattooga corridor:

- Chattooga River Crayfish--*Camburas scotti*
- Chauga Crayfish--*Camburas chaugaensis**
- Edmund's Snaketail--*Ophiogomphus edmundo**
- Mountain River Cruiser--*Macromia margarita**
- Brook Floater--*Alasmidonta varicosa**¹⁴⁸

The starred species were reviewed in the BE. The Chattooga River Crayfish was not. The entire list of species subject to the settlement should be reviewed by a Forest Service biologist to determine which occur in the Chattooga WSR Corridor, and management should address the likelihood that some will soon become federally protected threatened and endangered species.

8.4 Road/Trail Density

County Line Road/Trail appears to be located in Management Area 3B in the Nantahala and Pisgah National Forests. The Forest Service has proposed adding this road to the system and building a parking lot of approximately one acre somewhere along its length. Desired road density in Management Area 3B is 0.5 miles of open road per square mile. Current road density in the Chattooga River Watershed is 2.67 mi/mi².¹⁴⁹ Where desired road density is exceeded, the reason for the exceedance must be documented, and strategies to reduce the road density must be investigated.¹⁵⁰ When considering this addition, the Nantahala must also consider that Management Area 3B is supposed to be managed for game and non-game animals that cannot tolerate motorized disturbance.¹⁵¹ Increasing motorized access is therefore inconsistent with the LRMP and cannot be, and has not been, justified.

Nevertheless, the Nantahala National Forest continues in its persistent efforts to make the County Line Road/Trail a permanent fixture on the landscape. The "road" is now being bulldozed, ostensibly for a nearly decade-old timber sale, but the timing is suspicious.

9 Safety

The 2012 EA anticipates between 5 and 10 search and rescue operations per year. Chris Liggett has stated that "[t]he Forest Service also currently lacks the means necessary to search for and rescue stranded and injured floaters in that uppermost section of the river."¹⁵² Local search and rescue was apparently not consulted, but the Satolah, Georgia Volunteer Fire Department submitted comments stating that it

¹⁴⁸ See CBD Settlement.

¹⁴⁹ 2012 EA, p. 335.

¹⁵⁰ Nantahala LRMP, p. III-76.

¹⁵¹ Nantahala LRMP, p. III-74.

¹⁵² Liggett Declaration.

sees the search and rescue obligation as an unfunded mandate.¹⁵³ While this may or may not be the case, it is certainly evidence that the National Forests have not done appropriate groundwork to establish a search and rescue plan and a pre-accident plan that will both protect users and the Chattooga WSR Corridor and the Ellicott Rock Wilderness, where issues of use of equipment and access are more difficult.

The Decision Notices state that safety equipment will be determined at the district level, but boaters can be expected to pass through several districts. This is not a workable plan, and again demonstrates the need for a single, integrated, CRMP for the Chattooga WSR Corridor. That CRMP should include a pre-accident plan and coordination for Search and Rescue with the local entities that will be required to respond to emergencies. While wilderness users are allowed to put their own lives at risk, it is unconscionable for the Forest Service to not have in place a plan to protect the lives of likely rescuers. Pre-accident planning is also necessary to minimize damage to the Chattooga WSR Corridor and the Ellicott Rock Wilderness. Failure to require or even seriously consider these elements at a minimum before allowing boating is simply more evidence of the pro hac nature of the decision to open the

10 Enforcement

The Forest Service must “ensure that the use-limiting system is within the administrative capabilities of the managing unit.”¹⁵⁴ Here the Forest Service proposes using physical parking capacity, river level, time of year, and time of day to limit use, coupled with voluntary registration for some users and occasional drive by car counts to monitor whether capacity is being exceeded. Most of these drive by counts would take place in the summer when boaters are not present.¹⁵⁵ The National Forests estimate additional expense of \$90,000 per year with the first years requiring more--\$190,000 per year for the first two years and \$170,000 for years three and four.¹⁵⁶

The Forest Service has inadequate resources to monitor uses of the Upper Chattooga and to enforce even the existing bright-line standard.¹⁵⁷ Adding a new user group and more complex user guidelines will make monitoring more expensive and further tax limited law enforcement resources. In 2006, the Forest Service filed with the 11th Circuit Court of Appeals the declaration of Chris Liggett, the Director

¹⁵³ Attachment N, letter from James L. Reed, Chief of the Satolah Volunteer Fire Department, to the Chattooga Planning Team (January 21, 2011) (“Satolah VFD Letter”).

¹⁵⁴ FSM § 2354.41a.

¹⁵⁵ 2012 EA, Appendix G.

¹⁵⁶ *Id.* at Appendix B. Note that these numbers are based on the National Forests assumptions without addressing any of the deficiencies in the proposed monitoring, enforcement, and adaptive management Appellants have presented.

¹⁵⁷ See Liggett Declaration and Jensen Comments.

of Planning for the Southern Region of the Forest Service and a member of the Steering Team for the Chattooga River visitor capacity analysis process. Mr. Liggett stated that “[t]he Forest Service is not administratively prepared to immediately accommodate floaters on the uppermost section of the Chattooga Wild and Scenic River. It currently does not have sufficient staff to monitor the floating and to enforce existing applicable regulations on a new influx of users.”¹⁵⁸ Former Chattooga District Ranger David Jensen has expressed similar concerns, discussed above, and he notes that no law enforcement personnel were included on the team that developed the LRMP amendments and the supporting 2012 EA.

There is evidence that the Forest Service is unable (or unwilling) with existing resources to enforce use restrictions for existing uses on the Upper Chattooga. Standard 1.A-12 of the Sumter LRMP limits commercial and organized group size to twelve in the Ellicott Rock Wilderness. However, when recently called upon to enforce that standard, Ranger Mike Crane of the Andrew Pickens Ranger District stated that the Standard cannot, and is not, enforced by the U.S. Forest Service because the Sumter National Forest has not issued a “closure order.” The group size standard has been in place since at least 2004. If the Forest Service has failed to issue the appropriate closure order in that time, it cannot be expected to take the steps necessary to restrict the access of new users under a much more complex set of rules (e.g., group size, flow level, district-by-district safety requirements, time of day and year).

The proposed self-registration, upon which the protection of the Ellicott Rock Wilderness and the Chattooga WSR Corridor is based, is known to be unenforceable. There is a history of noncompliance with the self-registration requirement for private boaters on the Lower Chattooga WSR Corridor.¹⁵⁹ Having proven its inability to persuade or compel compliance downstream, it is unclear why the Forest Service has chosen this method of “enforcement” for the Upper Chattooga where solitude is a valued condition for all users and so number of users is an even more critical parameter to monitor and control.

A precondition of expanding uses and administrative commitment of resources should be the existence of those resources. Any new enforcement money is should first go to funding:

- River rangers for the Lower Chattooga, as envisioned in the 1980 Chattooga CRMP;
- Establishing a pre-accident plan with local search and rescue teams;
- Development of closure orders and whatever else is necessary to enforce existing capacity limits for the Ellicott Rock Wilderness and the entirety of the Chattooga WSR Corridor; and

¹⁵⁸ Liggett Declaration.

¹⁵⁹ Decision Notice for 2002 Amendment 14 to Sumter LRMP, Jensen Comments.

- Enforcement of rules intended to protect the Ellicott Rock Wilderness and the Chattooga WSR Corridor, including exclusion of ATV use, camping restrictions, group size limitations, and litter prevention.

11 The LRMP amendments are poorly drafted

As drafted, the LRMP Amendments (“Amendments”) do not mandate that boaters only enter the River at *designated* put-ins and take-outs and from designated trails. Instead, they allow, even encourage, boater access to more than three miles of river bank in the Upper Chattooga, not counting portage trails. This is because the undefined term “specific” is used to describe put-ins and take-outs. The sentence “Boaters must start or complete their trip at specific put ins and take outs at the following locations” should be amended to read instead: “Boaters must start or complete their trip at designated put-ins and take-outs. The Forest Service shall designate discreet put-ins and take-outs within the following areas.”¹⁶⁰ This change will better protect resources and will bring consistency to the amendments, which set as a desired condition that all users of the river corridor to stay on “designated trails.”¹⁶¹ It will also bring the Amendments within the scope of what was analyzed in the chosen Alternative 13A in the 2012 EA.

The defined terms “take-outs” and “put-ins” should be used consistently throughout the Decision Notices and amendments, replacing “take outs,” “takeouts,” and “put ins” to avoid any confusion.

The word “designated” should be removed from the definitions of “designated campsite,” “designated put-ins,” “designated takeouts,” and “designated trails.” “Designated” is already defined, and including it with the other term suggests that it has a different meaning when used in conjunction with those other terms.¹⁶² The definitions of “campsite” and “trail” should be amended to describe what trails and campsites are, or they could be removed altogether, since they are commonly understood terms.

Capacities should be made standards and not guidelines.¹⁶³ Specific, numeric limits on the number of people per day, at least on average, should be set, similar to what exists for the Lower Chattooga WSR Corridor.¹⁶⁴ The numbers should be sufficiently low to protect the solitude that sets apart the experiences of visiting the Lower and Upper portions of the Chattooga WSR Corridor.

Clear adaptive management triggers for more direct limitations on all user groups should be included. Suggested language for boating/floating use: “should daily self-

¹⁶⁰ See SCDN, p. A-1.

¹⁶¹ See GADN, p. A-2, SCDN, p. A-2.

¹⁶² SCDN, p. A-5.

¹⁶³ See SCDN, p. A-2.

¹⁶⁴ Sumter LRMP 2004, p. 3-12.

guided boater use reach 12 people per day for 10 days or more per year for 2 consecutive years on any section of the Upper Chattooga WSR Corridor, reservations would be required for self-guided boaters in the following year.”

The amendments to monitoring in the Nantahala LRMP are not consistent with the direction of the Fish and Wildlife Service. Among other things, they should require annual monitoring in perpetuity.¹⁶⁵

Monitoring elements should include baseline data, specific monitoring methods and frequency, and triggers for adaptive management (see monitoring and adaptive management described by the Fish and Wildlife Service for *Gymnoderma lineare*).¹⁶⁶

In conclusion, the National Forests should abandon the plan to allow interim boating; vacate the Decision Notices; prepare a single, integrated CRMP for the entire Chattooga WSR Corridor that includes capacities for all users, adequate monitoring, and adaptive management that management changes *prior* to degradation of the Chattooga WSR Corridor or the Ellicott Rock Wilderness; prepare an environmental impact statement to evaluate and support the new CRMP, including cumulative, direct, and indirect impacts; and take any implementation actions consistent with the CRMP and in a fully transparent manner.

Please address any questions regarding this appeal to me.

Sincerely,

/s/Rachel S. Doughty

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Greenfire Law
Attorney for
Georgia ForestWatch
Georgia Chapter of the Sierra Club
Wilderness Watch

¹⁶⁵ See NC FWS Letter.

¹⁶⁶ See above, section 8.3.